

IN RE: A.B., J.B., Z.B., T.S.1, T.S.2	:	APPEAL NO. C-090048
	:	TRIAL NO. F-0501627x
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	:	<i>JUDGMENT ENTRY.</i>
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<sup>1</sup> See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

In September 2006, HCJFS filed a motion for permanent custody of the children, and numerous hearings were held before a magistrate.

At the hearings, HCJFS presented evidence that the four oldest children suffered from serious emotional and psychological disorders, including post-traumatic stress disorder. There was evidence that the disorders had been the result of sexual abuse by Brown and her live-in boyfriend, James Schadler, as well as the children having witnessed violence between Brown and Schadler. HCJFS demonstrated that the abuse inflicted on the children had in turn caused them to engage in inappropriate sexual conduct among themselves. The youngest child, J.B., was too young for evaluation or therapy.

Despite the abuse described by the children, Brown denied that any sexual improprieties had occurred. She demonstrated poor compliance with court-ordered counseling, and she did not consistently take medication that had been prescribed for her psychological problems. Moreover, she continued to reside with Schadler until forced to take refuge in a battered-women's shelter. In December 2008, the juvenile court awarded permanent custody to HCJFS.

In her first assignment of error, Brown now argues that the magistrate erred in permitting HCJFS to present evidence of events that had occurred before the granting of temporary custody. She contends that HCJFS was improperly permitted to relitigate issues that had given rise to the findings of dependency and abuse and to thereby bolster its case for permanent custody.

R.C. 2151.414(A)(1) provides that “[t]he adjudication that the child is an abused, neglected, or dependent child and any dispositional order that has been issued in the case under section 2151.353 \* \* \* of the Revised Code pursuant to the adjudication shall not be readjudicated at the [permanent-custody] hearing.”

Though R.C. 2151.414(A)(1) does prevent the readjudication of issues relating to abuse, neglect or dependency, courts have held that the purpose of the statute is to prevent the *parent* from raising those issues to challenge the prior award of temporary custody.<sup>2</sup> The statute is not intended to preclude the state from establishing the factual background that had led to the finding of abuse, neglect, or dependency.<sup>3</sup> In any event, there was no indication in this case that the magistrate or the court had been confused or misled by the evidence. We overrule the first assignment of error.

In her second and final assignment of error, Brown argues that the juvenile court's grant of permanent custody to HCJFS was against the manifest weight of the evidence.

The juvenile court was required to determine whether permanent custody was in the best interests of the children pursuant to R.C. 2151.414(B)(1). In making this determination, the court was required to "consider all relevant factors," including those specified in R.C. 2151.414(D). A finding that the termination of parental rights is in the best interests of a child must be supported by clear and convincing evidence.<sup>4</sup>

Clear and convincing evidence is more than a mere preponderance of the evidence; it is evidence sufficient to produce in the mind of the trier of fact a firm belief or conviction as to the facts sought to be established.<sup>5</sup> A judgment supported by some competent, credible evidence going to all the essential elements of the case will not be reversed as being against the manifest weight of the evidence.<sup>6</sup>

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<sup>2</sup> See *In re Nice*, 141 Ohio App. 3d 445, 454, 2001-Ohio-3214, 751 N.E.2d 552. See, also, *In re Harris*, 1st Dist. No. C-020512, 2003-Ohio-672, ¶10.

<sup>3</sup> *In re Nice*, supra, at 454, 2001-Ohio-3214, 751 N.E.2d 552.

<sup>4</sup> R.C. 2151.414(B)(1).

<sup>5</sup> See *In re Adoption of Holcomb* (1985), 18 Ohio St.3d 361, 368, 481 N.E.2d 613.

<sup>6</sup> See *In re Harris*, supra, at ¶16.

In the case at bar, there was ample evidence to support the juvenile court's judgment. After the juvenile court had granted HCJFS temporary custody, Brown complied only sporadically with court-ordered reunification efforts. Despite compelling evidence that the children had suffered severe emotional damage as a result of sexual abuse, Brown denied that there had been such abuse and failed to remedy the conditions that had led to the removal of the children from her custody. She continued to maintain the abusive relationship with Schadler, and she failed to treat her own psychological problems.

But Brown argues that the court-ordered reunification plan was not sufficiently linked to the conditions that had led to the removal of the children from her home. This argument is untenable. The treatment plan, including sexual-offender assessments, specifically targeted the sexual abuse, domestic violence, and other behavior that had harmed the children. Brown's failure to appreciate the severity of the Problem or her willful denial of it did not render the court's plan unreasonable.

And though Brown emphasizes that she had a strong bond with the children and that she had made some efforts to comply with the reunification plan, we cannot say that the juvenile court's judgment was against the weight of the evidence.

Finally, Brown contends that the children's statements concerning the abuse constituted inadmissible hearsay. This argument is also without merit. The allegations were made in a therapeutic context and were thus admissible as statements made for purposes of medical diagnosis or treatment.<sup>7</sup>

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<sup>7</sup> Evid.R. 803(4). See, also, *State v. Walker*, 1st Dist. No. C-060910, 2007-Ohio-6337, jurisdictional motion overruled, 117 Ohio St.3d 1461, 2008-Ohio-1635, 884 N.E.2d 69 (statements made to a person other than treating physician, such as a social worker, are admissible under Evid.R. 803[4] if made for purposes of medical diagnosis or treatment).

Accordingly, we overrule the second assignment of error and affirm the judgment of the juvenile court.

Further, a certified copy of this Judgment Entry shall constitute the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

**HILDEBRANDT, P.J., PAINTER and DINKELACKER, JJ.**

*To the Clerk:*

Enter upon the Journal of the Court on April 8, 2009  
per order of the Court \_\_\_\_\_.  
Presiding Judge